



# Public Notice

Public Notice Date: July 18, 2008

Comment Due Date: August 18, 2008

Subject: Water Resources Development Act (WRDA) of 2000

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**US Army Corps  
of Engineers**  
Fort Worth District

The purpose of this public notice is to inform you of a proposal to accept and expend Regulatory Program funds contributed by a non-federal public entity. It is also to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest. We hope you will participate in this process.

## **Regulatory Program**

Since its early history, the U.S. Army Corps of Engineers has played an important role in the development of the nation's water resources. Originally, this involved construction of harbor fortifications and coastal defenses. Later duties included the improvement of waterways to provide avenues of commerce. An important part of our mission today is the protection of the nation's waterways through the administration of the U.S. Army Corps of Engineers Regulatory Program.

## **Section 10**

The U.S. Army Corps of Engineers is directed by Congress under Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) to regulate *all work or structures in or affecting the course, condition or capacity of navigable waters of the United States*. The intent of this law is to protect the navigable capacity of waters important to interstate commerce.

## **Section 404**

The U.S. Army Corps of Engineers is directed by Congress under Section 404 of the Clean Water Act (33 USC 1344) to regulate the *discharge of dredged and fill material into all waters of the United States, including wetlands*. The intent of the law is to protect the nation's waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical and biological integrity.

## **Contact**

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## **PUBLIC NOTICE**

### **U.S. ARMY CORPS OF ENGINEERS, FORT WORTH DISTRICT**

**BACKGROUND:** On December 11, 2000, The Water Resources Development Act (WRDA) of 2000 (Public Law 106-541) provided at Section 214(a); "In Fiscal years 2001 through 2003, the Secretary (of the Army), after public notice, may accept and expend funds contributed by non-Federal public entities to expedite the evaluation of permits under the jurisdiction of the Department of the Army." Further Section 214(b) provided; "In carrying out this section, the Secretary shall ensure that the use of funds accepted under subsection (a) will not impact impartial decision making with respect to permits, either substantively or procedurally."

a. Language in Section 114 of the Energy and Water Appropriations Bill, H2754 (Public Law 108-137), signed into law on December 1, 2003 states: "Section 114. Section 214(a) of Public Law 106-541 is amended by striking "2003" and inserting "2005".

b. Public Law 109-99, signed into law on November 11, 2005 amends subsection (a) by, "striking "In fiscal years 2001 through 2005." It goes on to insert a third subsection, (c), pertaining to the duration of the authority, stating, "the authority provided under this section shall be in effect from October 1, 2000, through March 31, 2006.

c. Two subsequent Acts of Congress, Public Law 109-209, signed on March 24, 2006, and Public Law 109-434, signed into law on December 20, 2006, each extended the date in subsection (c) to accept and expend funds, the first until December 31, 2006 and the second until December 31, 2008.

d. The Water Resources Development Act of 2007 (Public Law 110-114) includes language in Section 202 that further amends subsection (c) to extend the duration of this authority until December 31, 2009.

The Secretary of the Army has delegated this responsibility to the Chief of Engineers and his authorized representatives, including the Commander, U.S. Army Corps of Engineers, Fort Worth District.

**SUBJECT:** This public notice announces the preliminary intent of the Fort Worth District to accept and expend funds contributed by the North Central Texas Council of Governments, a political sub-division of the State of Texas, acting by and through its Regional Transportation Council (RTC), to expedite processing of associated Department of the Army (DA) permit applications, subject to a series of limitations. This Public Notice solicits comments from the general public on the subject of acceptance and expenditure of funds contributed by the RTC to expedite the evaluation of DA permit applications. The U.S. Army Corps (Corps) Regulatory Program is funded as a congressionally appropriated line item in the annual Federal budget. Additional funds received from non-Federal public entities may be used to augment the Fort

Worth District Regulatory budget in accordance with the provisions of WRDA Section 214. The Fort Worth District will establish separate funding accounts for each non-Federal public entity to track receipt and expenditure of the funds. Fort Worth District Regulatory staff will charge their time against the respective account of the non-Federal public entity when they did work to expedite resolution on one of the RTC's associated permit requests.

Funds will be expended by the Corps to defray the costs of Regulatory Project Managers (RPMs) (including salary, associated benefits, overhead, overtime, and travel expenses) and other costs in order to expedite the evaluation of permit applications associated with RTC projects. Such activities will include, but not be limited to, the following: application review, permit database entry, drawing correction, jurisdictional determinations, site visits, public notice preparation, preparation of correspondence, National Environmental Policy Act (NEPA) document review, public interest review, preparation of draft permit decision documents, meetings with the RTC and other agencies, compliance activities including monitoring of mitigation sites, creation of general permits to expedite projects, and any other permit evaluation-related responsibilities that may be mutually agreed upon. These funds will also be used to supply the RPMs with the tools of the trade customarily provided to and utilized by their colleagues in the Regulatory Program. Funds will not be expended for review of the RPM's work by supervisors or other persons or elements of the Corps in the decision-making chain of command. Enforcement activities will not be paid for from the funds contributed by the RTC, nor will such funds be used for paying the costs of public hearings and distribution of public notices.

If the RTC's funds are expended and are not replaced with additional funds, the Corps will reassign the RPMs to the Regulatory Branch. Any remaining RTC priority permit applications will be handled in the regular course of business like those of any other non-participant, in a manner decided by the assigned RPM and his or her supervisor.

The Southwestern Division and Fort Worth District Commanders will insure that the acceptance and expenditure of funds will not impact impartial decision making with respect to permit review and final permit decisions, either substantially or procedurally. All final permit decisions for cases where these funds are used must be reviewed by at least one level above the normal decision-maker, unless the decision-maker is the District Engineer. For example, if the decision-maker would be the Chief, Regulatory Branch, then the reviewer would be the Chief of the Planning, Environmental and Regulatory Division. In addition, all jurisdictional determinations made on projects where funds from this agreement are used must have documentation that a Regulator not funded by the RTC reviewed and agreed with the determination.

All final permit decisions for cases where these funds are used will be made available on the Fort Worth District Regulatory Branch webpage. The information will be posted in a clearly identifiable area that indicates which projects were funded through this authority.

The Corps will not eliminate any procedures or decision criteria that would otherwise be required for that type of project and permit application under consideration. The Corps must comply with all applicable laws and regulations.

Funds will only be expended to expedite the final decision on the permit applications. Funds will not be expended for the review of the decision-maker's decision. Funds will not be used for enforcement activities, but may be used for compliance activities including monitoring of mitigation sites.

We do not expect this method of expediting the permit review of certain public projects to negatively impact the Fort Worth District's Regulatory Program, or to increase the waiting time for permit evaluations that are not subsidized by funds contributed by non-federal sponsors. Reference documents and programmatic tools developed as a result of public entity funding will also be available for use by the general public. We expect the benefits of implementing this agreement to translate into an enhanced permit evaluation capability for all participants. The Fort Worth District Regulatory Program plans to add additional staff which should reduce the average processing times for all applications.

This public notice has a 30-day comment period. Following the review of comments we receive in response to the public notice, the Fort Worth District Commander will determine if acceptance and expenditure of the funds is in compliance with WRDA Section 214. Funds will be accepted only if the public interest is better served through cost-effectiveness, enhanced evaluation and capability, streamlined permit processing, or other appropriate justification. If the District Commander determines, after considering public comments, that the acceptance and expenditure of the funds is in compliance with WRDA and is not otherwise contrary to the general public interest, the Fort Worth District will proceed to accept and expend such funds from the RTC. A final public notice will be issued regarding the District Commander's decision. In the future, no new public notice will be issued if the RTC increases the amount of funds previously furnished, the WRDA Section 214 authority is extended to a later date or indefinitely, or a new agreement is signed, provided that the purpose remains the same.

**CLOSE OF COMMENT PERIOD:** All comments pertaining to this Public Notice must reach this office on or before August 18th, 2008, which is the close of the comment period. If no comments are received by that date, it will be assumed that there are no objections. Comments received on implementing WRDA Section 214 will be accepted and made part of the record, and they will be considered in determining whether it would be in the public interest to accept funds. Comments and requests for additional information should be submitted to: Regulatory Branch, CESWF-PER-R; U. S. Army Corps of Engineers; Post Office Box 17300; Fort Worth, Texas: 76102-0300.

You may visit the Regulatory Branch in Room 3A37 of the Federal Building at 819 Taylor Street in Fort Worth between 8:00 A.M. and 3:30 P.M., Monday through Friday. Telephone inquiries should be directed to (817) 886-1731. Please note that names and addresses of those who submit comments in response to this public notice may be made publicly available.

DISTRICT ENGINEER  
FORT WORTH DISTRICT  
CORPS OF ENGINEERS